

**MODIFYING THE DAVIS-BACON ACT: IMPLICATIONS FOR  
THE LABOR MARKET AND THE FEDERAL BUDGET**

**The Congress of the United States  
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## PREFACE

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The Davis-Bacon Act has been a subject of continuing controversy in the Congress. This paper, prepared at the request of the Subcommittee on Labor of the Senate Committee on Labor and Human Resources, describes the act and its effects on wages, federal construction costs, inflation, and employment. In addition, it examines options for modifying the Davis-Bacon Act and presents estimates of their impact on the federal budget.

This study was written by Steven H. Sheingold of the CBO's Human Resources and Community Development Division, under the direction of Nancy M. Gordon and Martin D. Levine. Many persons provided valuable technical and critical contributions, including Robert S. Goldfarb, Richard Hendrix, G. Brockwel Heylin, Michael O. Roush, James Schlicht, and Terry Yellig. Howard Levine provided computer assistance. Johanna Zacharias edited the manuscript. Jill Bury typed the several drafts and prepared the paper for publication.

In accordance with CBO's mandate to provide objective and impartial analysis, this paper contains no recommendations.

Alice M. Rivlin  
Director

July 1983



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## SUMMARY

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The Davis-Bacon Act, passed during the Depression to protect the living standards of construction workers, has recently become a subject of heated legislative debate and court dispute. The principal charges against Davis-Bacon are that it causes construction workers on federal projects to be paid at needlessly high rates, raises construction costs in general, fuels inflation, and limits employment opportunities in the industry. Such criticisms have prompted various proposals to amend or repeal Davis-Bacon, that could reduce federal spending by up to \$5 billion over the coming five years. Advocates of retaining the act, either intact or modified, cite benefits it confers--namely, protecting construction workers against wage cutting by contractors, adding a measure of stability to an inherently volatile labor market, fostering the recruitment and training of skilled labor, and assuring high building quality. Thus, an assessment of costs against benefits must underlie any possible legislative action on Davis-Bacon.

## POINTS OF CONTENTION ABOUT DAVIS-BACON

The most controversial Davis-Bacon provision is the requirement that workers on projects covered by the act be paid the "prevailing wage" for a particular type of work in a particular locality. No definition of prevailing wages is provided either in Davis-Bacon itself or in the 58 other statutes that today also carry prevailing-wage requirements. Rather, the determination is left to the discretion of the Secretary of Labor, and is based on observation of practices in an area where a federal project is to be done.

What is specified, however, is that the prevailing-wage provision cover all construction contracts (including those for painting, decorating, and repairing, as well as actual building) valued at \$2,000 or more. That threshold level, unchanged since 1935 despite substantial increases in construction costs in the intervening years, means that Davis-Bacon covers a range of federally funded or aided undertakings. Because federal involvement in the private market (in the form of grant monies, loans, and loan guarantees as well as direct federal projects) has become so extensive, a full one-fourth of all new construction, or \$53 billion worth in 1981, is covered by Davis-Bacon or related provisions.

Two issues arise in considering possible changes to the Davis-Bacon Act:

- o What are the costs and benefits of minimum wages such as those required by the act? and
- o Do current procedures for administering the act add unnecessarily to its costs?

### The Costs and Benefits of Minimum Wages

Any minimum wage affects how a labor market functions, potentially both imposing costs and providing benefits.

**Costs.** Minimum wages under Davis-Bacon can raise construction costs in several ways. First, to whatever extent wages below the Davis-Bacon minimum exist in an area, the act raises wages on federal projects--and in turn, federal costs--by excluding lower-paying firms that might otherwise have won contracts. In addition, minimum wages interfere with a major function of market-determined wages--namely, signaling workers to seek employment where their efforts are valued most highly. Both these factors may reduce employment levels and shift employment in favor of higher-wage workers. Finally, by raising wage rates and costs, Davis-Bacon minimum wages may contribute to general inflation.

**Benefits.** The Davis-Bacon Act's benefits include protecting both the living standards of construction workers and the competitiveness of local construction firms bidding against transient contractors who might win federal contracts on the basis of lower-than-prevailing local wages. Government contracts are especially vulnerable to such practices, because they must be awarded to the lowest qualified bidder. Further, by excluding bids from contractors who would use lower-wage, less-skilled workers, Davis-Bacon may aid federal agencies in choosing contractors who will do high quality work. Finally, by helping to stabilize wage rates in the inherently volatile construction labor market, Davis-Bacon may aid the industry in recruiting and training workers, thereby helping to maintain the long-term supply of skilled labor.

### Administrative Issues

The administration of Davis-Bacon raises several other questions. First, how should a "prevailing wage" be defined in markets where many wages are paid within any one labor classification? This is perhaps the most difficult question to answer, since the meaning of "prevailing" is unclear unless almost all of the group earn the same wage. Second, should the use of less-skilled labor such as helpers and trainees be restricted on federal projects? Third, to assure compliance with the act, how much payroll information should be required of contractors?

The procedures for administering Davis-Bacon are in a state of flux, because regulations published by the Department of Labor (DoL) in May 1982 have been challenged in the courts. At present, the prevailing wage for any one labor classification in a locality can be determined by DoL in several ways, depending on circumstances. If half or more of all workers in a classification are paid a single rate, that rate is taken as the prevailing wage. If no single rate for a majority of workers exists, the local average is used. Until June 1983, an intermediate step--the so-called "30 percent rule"--was applied; under this procedure, disputed in the courts and likely to continue to be argued in future proceedings, the prevailing wage was defined as whatever rate is paid to the largest proportion above 30 percent of the workers in a given classification and locality. Either the majority rule or the 30 percent rule may lead to union wages--which are generally the highest rates--being issued as prevailing in areas that are heavily unionized. When the average is used, on the other hand, some workers will normally be paid more than the prevailing wage and some less, but the rate itself may actually be paid to none of them.

The DoL's current procedures for defining classes of laborers and mechanics, which generally restrict the use of helpers (less-skilled workers who assist veteran "journeymen") and trainees on Davis-Bacon projects, are also controversial. Wage determinations are issued for helpers only under a number of restrictions, while lower wages for apprentices can only be paid when such workers participate in training programs approved by the DoL. The May 1982 regulations would have loosened many of these restrictions and allowed two helpers to be employed for every three journeymen. These changes were all disallowed by the District Court, but some were reinstated by the Court of Appeals. The latter ruling will likely lead to some expansion in the use of helpers on Davis-Bacon projects, but how much is uncertain.

To assure compliance, current administrative procedures require contractors to submit detailed weekly payroll information as well as statements of compliance. The new regulations would have eliminated the former but retained the latter. This provision was disallowed by both the District Court and the Court of Appeals.

#### EVIDENCE ON THE EFFECTS OF DAVIS-BACON

Available evidence suggests that the Davis-Bacon Act increases federal construction costs in three ways:

- o By raising wages on federal projects;
- o By requiring labor to be used in a costly fashion; and
- o By imposing reporting and paperwork requirements on contractors.

The Congressional Budget Office (CBO) estimates that the total amount by which Davis-Bacon raises federal construction costs (the sum of these effects) is approximately 3.7 percent--equivalent to an increase of federal outlays of just over \$1 billion during fiscal year 1982. Because of a number of problems in available data and method, however, this estimate should be taken as tentative. The act may also have other consequences, but data on these effects are highly inconclusive. It seems to have no measurable effect on the overall rate of inflation; it may increase formal skill training; but it may also somewhat restrict employment opportunities for workers in the construction industry.

### Effects on Wages

Davis-Bacon probably raises wages on federal construction projects in two ways. First, it effectively excludes contractors who would have paid their workers wages below the prevailing rates determined by DoL. Second, current procedures for setting prevailing wages may result in determinations that are artificially high by, for example, favoring union wages over non-union rates, or using data from a different locality in which wages are higher. Recent evidence indicates, though, that current definitions of prevailing wage do not consistently favor union rates, but they do lead to Davis-Bacon wages that are above area averages. Evidence concerning "importation" of wage rates from one locality to another is inconclusive.

Derived by various techniques, estimates of the additional federal costs attributable to Davis-Bacon wage determinations have ranged from \$75 million a year to nearly \$1 billion. These estimates have been questioned, however, because of data limitations, and because the estimates generally translate wage increases directly into cost increases without accounting for such possible offsetting factors as higher productivity in some tasks. A DoL estimate of \$570 million, which corrects for some of these problems, is the best available and serves as part of the CBO's estimate of the total effect.

### Effects on the Use of Labor

Another large impact of Davis-Bacon on federal costs results from the act's effect on the use of labor. Because wage determinations for helper and trainee classifications are seldom issued, most employees on federal projects are currently paid journeymen's wages. The DoL estimates that, if unlimited substitution of helpers for journeymen (both craftsmen and laborers) had been permitted in fiscal year 1982, federal construction costs would have been \$480 million lower in that year.

## Effects on Compliance Costs

Compliance procedures attached to Davis-Bacon under the Copeland Anti-Kickback Act (also enacted during the Depression) increase federal construction costs slightly. The CBO estimates that the requirement for weekly payroll submissions cost \$50 million in fiscal year 1982, mainly through its effect on smaller contractors who do not normally maintain full-time clerical staff.

## OPTIONS FOR CHANGING THE DAVIS-BACON ACT

Options for altering the Davis-Bacon Act--all of which are reflected in proposals now pending before the 98th Congress--include:

- o Repealing the act outright;
- o Increasing the current dollar threshold below which Davis-Bacon requirements would not apply;
- o Including a specific definition of prevailing wage in the act;
- o Allowing more use of helpers;
- o Reducing required compliance activities; and
- o Combining several of the above modifications.

Adoption of any of these options but repeal would preserve the fundamental benefits the act was designed to offer while still saving varying amounts of federal outlays.

## Repealing the Act

If the Congress decided that the benefits of Davis-Bacon do not justify the act's costs, it could repeal the act and amend the other statutes carrying prevailing-wage stipulations. Repeal would save just over \$5 billion in federal outlays during the fiscal year 1984-1988 period. Since a large portion of current construction outlays represents spending under commitments made in past years, savings in the initial years would be relatively small. For example, fiscal year 1984 savings would be \$420 million, compared to \$1.4 billion in 1988 (as shown in the Summary Table).

The magnitude of any adverse effects that might follow from repeal would depend on several factors. Fluctuations in construction wages might

**SUMMARY TABLE. PROJECTED FEDERAL SAVINGS FROM CHANGES TO THE DAVIS-BACON ACT, FISCAL YEARS 1984-1988 (In millions of dollars)**

	1984	1985	1986	1987	1988	Cumulative 1984-1988
<b>REPEAL DAVIS-BACON</b>						
Outlays	420	900	1,175	1,305	1,400	5,195
<b>RAISE THE DOLLAR VOLUME THRESHOLD</b>						
<b>\$40,000 Level</b>						
Outlays	15	35	45	50	50	190
<b>\$250,000 Level</b>						
Outlays	75	165	215	235	255	940
<b>DEFINE PREVAILING WAGE AS THE AREA AVERAGE</b>						
Outlays	35	75	95	105	115	420
<b>ALLOW EXPANDED USE OF HELPERS</b>						
<b>Unlimited Substitution of Helpers for Journeymen</b>						
Outlays	180	390	510	565	605	2,250
<b>Limit of Two Helpers Per Three Journeymen</b>						
Outlays	135	290	380	425	450	1,685
<b>REDUCE REQUIRED COMPLIANCE ACTIVITIES</b>						
Outlays	20	40	55	60	65	240
<b>ELIMINATE THE 30 PERCENT RULE, SET THRESHOLD AT \$100,000, AND ALLOW UNLIMITED SUBSTITUTION OF HELPERS</b>						
Outlays	205	435	570	635	680	2,530

**SOURCE:** Congressional Budget Office.

**NOTE:** Savings in individual years may not sum to five-year cumulative savings because of rounding. For detailed descriptions of the options, see Table 3, pp. 36-38.

increase slightly, depending on the strength of the overall economy, the stabilizing effect of market forces, and institutional arrangements such as collective bargaining. To the extent that this increased instability occurred, the earnings of some workers would be reduced, and the industry's efforts to maintain the supply of skilled labor might be somewhat hampered. Whether the quality of federal construction would decline is uncertain.

### Reducing Coverage

Short of repeal, the Congress could narrow the coverage of Davis-Bacon by increasing the minimum-size contract to which the act applies. This could be done either by indexing the \$2,000 threshold for both past and future increases in construction costs, or by raising it to an even higher level. The first approach--which implies a fiscal year 1984 threshold of \$20,000 to \$40,000, depending what index was used--would hold the value constant in inflation-adjusted terms. The second approach would further reduce the number of contracts to which the act applied while maintaining coverage for most federal construction dollars. A level of \$250,000 for example, would eliminate more than 90 percent of all contracts--accounting for less than 20 percent of the federal expenditures for construction.

Savings from this approach would be small unless the threshold were raised substantially. Establishing a \$40,000 threshold, for example, would reduce federal costs by \$190 million during the 1984-1988 period; a \$250,000 threshold would save \$940 million over the same five years.

### Changing the Definition of Prevailing Wage

The Congress could also amend Davis-Bacon to include a definition of prevailing wage. Legislating the definition of prevailing wage to be either the rate paid to at least 50 percent of all workers in a locality or the area average (in other words, eliminating the 30 percent rule) would have no effect on federal construction outlays if the recent regulatory change is upheld. If this change is disallowed by future court rulings, however, such legislation would affect about one-third of all wage determinations, reducing total wages on federal construction projects by between 1 percent and 2 percent. This impact, which would likely be concentrated in rural and small urban areas, would translate into cumulative outlay reductions of \$560 million for the fiscal year 1984-1988 period.

If, instead, the Congress defined the prevailing wage as the average for an area--eliminating the majority rule as well--savings would be \$420 million over the 1984-1988 period. This change would affect large urban areas as well as rural and small urban ones. Wages would rise, however,

wherever the area average was higher than the rates paid to a majority of workers. Since calculations under this approach would include all wages paid in an area, this change would suffice to preserve the act's initial function--protecting the living standards of communities--though it would at times imply that the "prevailing" wage was not in fact a rate actually received by any worker.

#### Allowing Expanded Use of Helpers

The DoL could issue wage determinations for categories of labor such as helpers. The Congress could allow unlimited use of helpers or could expand their use with some restriction--as in the recently proposed DoL regulations. The CBO estimates that cumulative savings would total \$2.3 billion during the fiscal year 1984-1988 period if unlimited substitution were allowed, and \$1.7 billion if a restriction of two helpers to every three journeymen were imposed. These savings would be reduced to the extent that the new DoL procedures--those allowed by the U.S. Court of Appeals--lead to an expanded use of helpers under current law.

Such an approach would have several other effects. For one, the strength of nonunion contractors in competing for federal projects would probably increase, since they are not restricted by labor contracts from substituting lower-wage helpers for craftsmen and laborers. In addition, the number of less-skilled workers employed on federal projects would probably rise, thereby possibly aiding minority workers attempting to enter the industry.

On the other hand, the number of workers receiving formal training would probably decline. Contractors who are now induced to provide DoL-approved apprenticeship programs as the only permissible way to pay lower wages would tend to substitute helpers and informal trainees for apprentices. To the extent that this occurred, the access of minority workers to skilled crafts might be reduced and the future supply of skilled labor limited.

#### Reducing the Amount of Required Compliance Activities

To reduce the costs of compliance procedures, the Congress could codify DoL's proposal to eliminate weekly payroll submissions unless they were explicitly requested by the contracting agency. This change could save some \$240 million between fiscal years 1984 and 1988. Limiting paperwork requirements might also induce more small contractors--who in the past have claimed to be discouraged by the recordkeeping activities--to bid for federal projects. On the other hand, this approach would probably



also reduce contracting agencies' ability to detect noncompliance with the act.

#### Using a Combination of Options

The Congress might want to consider enacting a combination of the preceding options. For example, if Davis-Bacon were amended to raise the coverage threshold to \$100,000, eliminate the 30 percent rule from the determinations of prevailing wage, and allow unlimited use of helpers (as proposed in S. 1172), federal outlays would decline substantially--by at least \$2.5 billion for the fiscal year 1984-1988 period. (Savings would rise to \$3.0 billion if the 30 percent rule were reinstated by the Court of Appeals.) Moreover, savings from this option would approach \$1 billion a year after fiscal year 1988, even if the 30 percent rule were not reinstated.